HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.423 OF 2004.
WITH
CRIMINAL APPLICATION NO.424 OF 2004

Suleman Abdul Hamid Ansari. ..Applicant.

Versus.

Mohd. Zahir Haji Abdul Aziz & Ors. ..Respondents.

Mr.Rajendra Sorankar, advocate for the applicant.

Mr.Ramesh Karale, advocate for the respondent Nos.2 and 3.

Mr.A.S.Shitole, APP, for State.

CORAM: V.M.KANADE,J

DATE: MARCH 18, 2005.

P.C.

1. Heard the learned counsel for applicant and respondent in both the applications. Leave is granted. The Appeals are taken up for hearing forthwith.

2. A short question which is involved in these appeals is whether the trial Court has properly exercised its discretion while dismissing the complaint under section 256 of the Cr.P.C. The applicant is challenging the order dated 29/11/2003 passed by the J.M.F.C., Bhivandi who has dismissed the complaint for want of prosecution under

section 256 of Cr.P.C. It is submitted by the counsel appearing on behalf of the applicant that the complaint was filed in 1995 and the complainant remained present almost on each and every date and only on one date the complainant could not remain present as he was not well on that date. The trial court on 29/11/2003 dismissed the complaint. It is submitted by the learned counsel appearing on behalf of the applicant that the trial Court acted arbitrarily dismissing the complaint for want of prosecution.

3. The learned counsel appearing on behalf of the respondents vehemently opposed the submissions made by the learned counsel for the applicant and submitted that the case is pending for more than 8 years and accused were harrassed by the complainant. It is submitted that the trial Court was justified in passing order under section 256 of Cr.P.C. I have perused roznama which is annexed to the application. From the roznama, it can be seen that practically on each and every date from 28/8/1995, the complainant had remained present. On the contrary, the accused remained absent on 6/2/96, 15/5/96, 4/6/98, 23/3/99, 28/7/98, 28/9/98, 29/4/99, 15/7/99, 31/8/99, 9/9/99, 15/11/99, 7/3/2000, 30/3/2000, 24/5/2000, 28/6/2000. Ultimately, non-bailable warrant was issued on the application filed by the complainant on 28/6/2000.

Thereafter, again inspite of issuance of Non-bailable warrant against accused, he remained absent atleast for 6 times. In my view, Trial Court clearly acted arbitrarily. Merely because the complainant remained absent for one date, the Magistrate was not justified in exercising the discretion under section 256 of Cr.P.C., particularly when presence of complainant is not required. Plea of the accused has to be recorded which could have been done by the Judicial Magistrate First Class in the absence of the complainant. This Court as well as the Supreme Court had held that the provisions of Section 256 Cr.P.C. should not be used as a short-cut for disposal of the case. Under the circumstances, impugned orders in both the appeals are set aside. Both the complaints are restored to the file. The trial Court is directed to decide the case expeditiously, in any case within a period of 6 months. Both the appeals are allowed in the above terms.

(V.M.KANADE,J)